



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

August 20, 2020

Jean-Pierre L. Oriol, Commissioner  
U.S. Virgin Islands Department of Planning and Natural Resources  
Charles W. Turnbull Regional Public Library  
4607 Tutu Park Mall  
St. Thomas, Virgin Islands 00802

Dear Commissioner Oriol:

The U.S. Environmental Protection Agency, Region 2 (EPA) has completed its review of the U.S. Virgin Islands Department of Planning and Natural Resources (VIDPNR) revisions to the U.S. Virgin Islands Water Quality Standards (VIWQS) and approves the VIWQS as explained below. The VIWQS were approved by Governor Albert Bryan Jr. on December 31, 2019 and submitted to the EPA on August 5, 2020. The EPA, as part of our review, considered the following documents submitted with the revised VIWQS:

1. The letter, dated May 28, 2020, from Virgin Islands Attorney General Denise N. George, certifying that the VIWQS were duly adopted pursuant to Territorial law and the requirements in the Virgin Islands Code Title 12, Sec.186(b) and the Virgin Islands Code Title 3, Chapter 35;
2. Amended Virgin Islands Water Quality Management Program Water Quality Standards Rules and Regulations, Title 12, Chapter 7, Subchapter 186;
3. Basis and Background for the 2019 Water Quality Standards Revision for the U.S. Virgin Islands;
4. Copy of July 31, 2018 Public Notice for public hearings on the proposed revisions;
5. Memorandum regarding attendance at the public hearings;
6. Copies of comments on the proposed revisions to the VIWQS; and,
7. Responsiveness to Comments Summary.

Under Section 303(c) of the Clean Water Act (CWA), 33 U.S.C§131.3(c), states, tribes, commonwealths and territories are required to conduct a triennial review of their water quality standards and submit any new or revised standards to EPA for review. Federal regulations at 40 C.F.R. §§ 131.20-131.22 implement these requirements. The VIWQS submitted fulfill the VIDPNR triennial WQS review requirement.

The U.S. Virgin Island's previous review and revision of its water quality standards were adopted on August 28, 2015, submitted to the EPA on April 13, 2016 and approved by the EPA on May 2, 2016. As part of its 2019 review process, by the Public Notice issued in The Virgin Islands Daily News on July 31, 2018, the VIDPNR initiated a 60-day public comment period and held a public hearing on August

31, 2018 for St. Croix and on September 4, 2018 for St. Thomas/St. John to encourage public input and comment on the proposed revisions to the VIWQS. Based on our review, VIDPNR's procedures are consistent with, and satisfy the procedural requirements of 40 C.F.R. § 131.20(b).

The following constitute the revisions, which are being addressed under this action. These revisions enhance the VIWQS and represent improvements in the VIWQS. The revisions are separated into three categories based upon the applicable EPA action.

I. Revisions which are Approved Pursuant to Section 303(c) of the CWA:

- (1) Section 186-1 "Definitions": The addition, revision or clarification of definitions describing terms related to human health protection, which are approved as being consistent with the requirements under 40 C.F.R. 131.3;
- (2) Section 186-4 "Classification of Water Designated Uses": The adoption of a new designated use for potable water source, and inclusion of Total Coliform criterion to protect this new use, which are approved as being consistent with the requirements under 40 C.F.R. 131.10(a) and 131.11(a)(1);
- (3) Section 186-5 "General Water Quality Criteria": The adoption of new and/or revised applicable human health water quality criteria for toxic pollutants to reflect EPA's current nationally recommended Clean Water Act section 304(a) water quality criteria (published in 2015), which are approved as being consistent with the requirements under 40 C.F.R. 131.11(a)(1) and (2);
- (4) Section 186-8 "Anti-degradation Policy and Implementation Procedures": The adoption of revisions to reflect EPA's Final Rule Changes to 40 CFR §131.12 (published in 2015), which are approved as being consistent with the requirements under 40 C.F.R. 131.12(a)(2); and,
- (5) Section 186-12 "Schedules of Compliance": Revisions to reflect EPA's Final Rule Changes to 40 CFR §131 (published in 2015).

By this letter, I am pleased to approve the above revisions to the VIWQS pursuant to Section 303(c) of the CWA.

II. Revisions which are Approved based on the completed consultations with the U.S. Department of the Interior, Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA-NMFS), under Section 7(a)(2) of the Endangered Species Act (ESA):

- (1) Section 186-1 "Definitions": The addition, revision or clarification of definitions describing terms related to the aquatic life protection in the USVI inland (Class I Waters) and marine (Class A, B and C) waters, which are approved as being consistent with the requirements under 40 C.F.R. 131.3;
- (2) Section 186-2 "Classification of Territorial Waters": The adoption of clarifications regarding different types of Inland Waters (Class I);
- (3) Section 186-3 "Legal Limits": The addition of the Legend information to clarify map delineations to prevent confusion between the different shaded areas, in response to public comments generated during the 2015 WQSR triennial review process;
- (4) Section 186-4 "Classification of Water Designated Uses": The adoption of a Dissolved Oxygen

criterion for Class I waters; revision of the Temperature criterion to incorporate a “natural conditions” provision; clarification of the biocriteria standard to further condense the requirements; adoption of a more stringent clarity criterion for areas where coral reefs are located; clarification of the pH criterion to better address the “natural conditions” provision for all Water Classes, and adoption of new a Total Nitrogen criterion for all marine waters, which are approved as being consistent with the requirements under 40 C.F.R. 131.10 and 131.11;

- (5) Section 186-5 “General Water Quality Criteria”: The revision to the narrative criterion for Turbidity; revision to the narrative criterion for Downstream Protection; revisions of freshwater and saltwater Aquatic Life criteria for cadmium and revision of freshwater Aquatic Life criterion for selenium to reflect EPA's current nationally recommended Clean Water Act section 304(a) water quality criteria, which are approved as being consistent with the requirements under 40 C.F.R. 131.11(a)(1) and (2);
- (6) Section 186-6 “Thermal Policy”: The removal of originally misplaced sub-section (5) related to the Mixing Policy; and,
- (7) Section 186-14 “Water Quality Standards Variances”: The adoption of revisions to reflect EPA’s Final Rule Changes to 40 CFR §131.14 (published in 2015).

EPA initiated informal consultation with the FWS on August 20, 2018, under Section 7(a)(2) of ESA, on the above provisions. Section 7(a)(2) requires that federal agencies, in consultation with the Services ensure that their actions are not likely to jeopardize the existence of federally listed species or result in the adverse modification of designated critical habitat of such species. On September 12, 2018 the FWS submitted a concurrence letter to EPA stating that it concurs with EPA’s determination that the proposed project is not likely to adversely affect threatened and endangered species, therefore no further consultation was required.

EPA initiated informal consultation with NOAA-NMFS on July 30, 2014, under Section 7(a)(2) of the ESA. In a letter to EPA, dated November 25, 2014, NOAA-NMFS stated that it has elected to conduct a batched programmatic consultation for the 2014/2015 VIWQS and suggested that EPA submit a Biological Evaluation (BE) to NOAA-NMFS for this programmatic action. EPA submitted its draft BE document to NOAA-NMFS on December 30, 2015, providing an evaluation for: all aquatic life-based water quality criteria previously adopted by the USVI into its WQSR in 2015; and, criteria proposed in 2019. The intent of this BE was to support EPA’s determination of “not likely to adversely affect” the threatened and endangered marine species located in the U.S. Virgin Islands waters. In response to this BE, on September 9, 2019, NOAA-NMFS submitted a Biological Opinion (BO) to EPA on the effects of the EPA's approval of the 2018/2019 VIWQS, concluding ESA Section 7 Formal Consultation on the USVI WQSR.

By this letter, I am pleased to approve the above revisions to the VIWQS pursuant to Section 303(c) of the CWA.

### III. Revisions which EPA is not Taking Action on Pursuant to Section 303(c) of the CWA:

Finally, please note that EPA is not taking action pursuant to Section 303(c) of the CWA on the following revisions, since these provisions relate to requirements associated with other areas of the water program, including permitting and assessment, rather than elements of Section 303(c) of the CWA relating to water quality standards.

- (1) Section 186-1 “Definitions”: Revisions to terms related to other than water quality standards areas of the water program;
- (2) Editorial revisions including the following:
  - a. Correction of the term Outstanding Natural Resource Waters to Outstanding National Resource Waters (or ONRW), throughout the VIWQS document,
  - b. Section 186-4 “Classification of Water Designated Uses”: Editorial revisions to the biocriteria standard language to eliminate redundancy, and
  - c. Section 186-5 “General Water Quality Criteria”: Revision to tables, charts and associated footnotes relating to Numeric Water Quality Criteria for Toxic Pollutants in Section 186-5(b) to address formatting and layout.

EPA Region 2 looks forward to continuing to work with VIDPNR to further improve the VIWQS. If you have any questions, please call me at 212-637-4125 or have your staff contact Alyssa Arcaya, Chief, Clean Water Regulatory Branch at 212-637-3730.

Sincerely,

Javier E. Laureano  
August 20, 2020 12:54pm

Javier Laureano, M.P.A., Ph.D.  
Director  
Water Division

Cc: Austin F. Callwood, Director, VIDPNR  
Mary Stiehler, VIDPNR  
bcc: Jeff Gratz, WD  
Alyssa Arcaya, WD-CWRB  
Wayne Jackson, WD-CWRB  
Eduardo J. Gonzalez, ORC-WGLB  
Izabela Wojtenko, WD-CWRB  
Tom Gardner, OST-SHPD (Mail Code 4305T)  
TMDLST Reading File  
WD Reading File